

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

In this episode, we discuss Prior Written Notice. My guest, Beth Nelson helps us understand what PWN is and why it is important to the IEP process. Below, find resources and links mentioned in the discussion as well as a transcript of the discussion.

Resources:

CDE IEP Procedural Guidance:

http://www.cde.state.co.us/cdesped/iep_proceduralguidance

See below for the Dispute Resolution Options Table. You can also find it here:

<https://www.cde.state.co.us/spedlaw/drcomparison>

Special Education Dispute Resolution

	Mediation	State Complaints	Due Process (Non-Expedited) Complaints
Who can file?	A parent or the Administrative Unit (AU) may request it, but both parties must voluntarily agree to mediation before it can go forward.	Any individual or organization.	Parents or the AU.
For what issues?	Disputes concerning matters protected under the Individuals with Disabilities Education Act (IDEA) or the Exceptional Children's Educational Act (ECEA).	Any alleged IDEA or ECEA violation that occurred not more than one year prior to the date of a properly filed complaint.	Any alleged IDEA or ECEA violation that occurred within the past two years concerning the identification, evaluation or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE).

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

Cost?	Free to the parties. The Department pays for the Mediator's services.	No filing fees. Each party must pay for any attorney fees and costs that they incur.	No filing fees. Each party must pay for any attorney fees and costs that they incur.
Who decides?	The parties control the outcome.	The State Complaints Officer (SCO).	The Administrative Law Judge (ALJ).
What happens?	An impartial Mediator is assigned to assist the parties in resolving their dispute. The Mediator helps the parties to express their views and positions but remains neutral and does not take the side of either party.	A party files a state complaint and documentation. The other party then files a response. The complaining party can then file a reply to the response. The assigned SCO conducts an investigation, including interviews and review of the relevant documentation.	A party files a due process complaint and documentation. An ALJ is assigned. The AU must conduct a resolution meeting. Any unresolved issues are heard by the ALJ. At the hearing, each party presents evidence, gives testimony and cross examines witnesses.
Timeline	Mediations must be scheduled in a timely manner. Typically, mediations are completed within 30 calendar days of a mediation request.	A written decision is issued within 60 calendar days after a properly filed complaint was received by the SCO and the AU.	The AU must convene a resolution meeting within 15 days of a properly filed complaint. The resolution period may continue for up to 30 days. If no resolution is reached, a hearing must be conducted and a decision issued within 45 days.
Outcomes & Remedies	To be enforceable, any agreements reached must be reduced to a written settlement agreement and signed by both parties during the mediation. As to unresolved disputes, a party may file a state and/or due process complaint.	The SCO issues a written decision. If the SCO determines that IDEA violations require remedies, the SCO enters orders that the AU must follow to correct the violations, including, but not limited to, a corrective action plan, compensatory services, reconvening of the IEP meeting, etc. If the SCO determines that no IDEA	The ALJ issues a written decision. If the ALJ determines that IDEA violations require remedies, the ALJ enters orders that must be taken to correct the violations, including, but not limited to, compensatory services, reconvening of the IEP meeting, etc. If the ALJ determines that no IDEA violations occurred, no remedies are ordered.

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

		violations occurred, no remedies are ordered.	
Appeal?	If a party alleges that a settlement agreement has been breached, that party may seek enforcement of the agreement in state or federal court.	The SCO's decision cannot be appealed but either party may file a due process complaint on the same issue(s).	The ALJ's decision may be appealed in state or federal district court within 90 days of the date of the decision.

Transcript

SPEAKERS

Veronica Fiedler, Beth Nelson

Veronica Fiedler 00:15

Greetings friends and colleagues, welcome to the Gray Area, a podcast where we examine pressing issues and common questions about specific learning disability. I am your host, Veronica Fiedler, the specific learning disability specialist at the Colorado Department of Education. Today we'll be discussing prior written notice or What's otherwise known as PWN and joining us today is Beth Nelson. Beth, do you want to tell us a little bit about what your role is with CDE?

Beth Nelson 00:54

Sure. I'm in the Exceptional Student Services Unit. I'm on the general supervision and monitoring team. We ensure compliance of IEPs and making sure that students across Colorado are getting the appropriate special ed services and related services that they need.

Veronica Fiedler 01:10

Great thanks for that. And so this this idea to do PWN actually came out of just a personal experience as well as conversations that I had with with people in the department and in my office. And I always was really... when I was working in the field as a as a case manager. I was

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

always really confused about PWN and exactly what it was and what was supposed to go in it. And I remember trying to seek out information from my support people about around that and I never could get really a clear answer. And then I started talking to people in the in the in my office at CDE about PWN and I learned that I was not the only one. That actually PWN is a really confusing thing out there for for a lot of people. So that's how this podcast idea came about. So the first question I want to start with is, what exactly is prior written notice and why is it important?

Beth Nelson 02:14

OK, prior written notice is one of the procedural safeguards that is essential for the parents ability to participate in the development of the student's educational program. Prior written notice is a procedural requirement that the school districts provide sufficient notice before it makes substantial changes to the student's educational program. It informs the parents of the change the reason for the change, and the data relied on for the proposal or the refusal of the change. Prior written notice also gives parents the right to file due process if they do not agree with the change. So that's why it is important to give it to them prior to any changes to their education program.

Veronica Fiedler 02:16

SO that is what the prior part means. Because that is one of the questions I always had: Before what? Prior to what? So it is prior to implementing any sort of change.

Veronica Fiedler 02:51

And so with that in mind, under what conditions must an IEP team provide prior written notice?

Beth Nelson 03:00

Prior Written Notice is provided when the district proposes to initiate or change the identification of a student, the evaluation of a student, the educational placement of a student, and the provision of FAPE which is free and appropriate public education. It's also given when the district refuses to initiate or change the identification of a student, the evaluation of a student, the educational placement of a student and the provision of FAPE. So it's whenever they propose to initiate a change or refused to initiate or change.

Veronica Fiedler 03:37

Great. And so what are the components of a PWN?

Beth Nelson 03:43

Okay, so there are seven components of the prior written notice. It must include a description of the school's actions proposed or refused an explanation of why the actions are proposed or

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

refused a description of the evaluations, procedures, records reports. Anything that was used as the basis for the proposed or refused action, a description of any other options that IEP team considered, and the reasons for rejecting those; a description of any other factors relevant to the proposal or refusal of the action; sources for the parent to contact in case have any questions about the prior written notice; and acknowledgement of the provision of the procedural safeguards. And in addition to those seven components, the prior written notice must be in written language understandable to the general public and provided in the native language of the parents, or other mode of communication used by the parent. Unless it's clearly unfeasible to do so. If the native language or mode of communication to parent is not a written language steps must be taken to translate the notice orally or by other means to the parent in his or her native language, ensuring that the parents understand the notice.

Veronica Fiedler 05:02

All right, that's a lot to keep in mind for sure. Yeah. So how does the IEP team document PWN

Beth Nelson 05:12

Prior Written Notice there's a section embedded in the IEP. It's used to document the decisions that were made throughout the IEP meeting. And there's also prior written notice and consent for eval that's used anytime parent consent for eval or evaluation is obtained. And you're giving notice to the parent that these are the evaluations that you're going to do. There's also prior written notice of special education action that is given to the parents when the district decides to take an action related to the student's identification, evaluation or placement or FAPE of the student. There's also a prior written notice and consent for initial provision of services. And that's used after the determination that the student qualifies for special education and the parent is giving their permission for special education and related services to begin. And anytime you amend an IEP, there's an IEP amendment prior written notice, and that's just used to document the changes that are going to happen to the student's IEP and so that parents are aware of what is happening.

Veronica Fiedler 06:19

Great. And so what are some of the common problems that we see in state complaints with PWN?

Beth Nelson 06:31

So prior written notice that it's one of the most frequent findings of non compliance instinct complaints, next to parent participation. And they kind of go together in the fact that if the prior written notice is not understandable or not given in a proper timely manner, it impedes the parents participation. So if there's questions about what's happening, that prior written notice is documentation of what was discussed at the meeting. It must be provided in a reasonable time

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

prior to the change. As I said earlier, it gives the parents the opportunity to investigate find out if you know if they want to file due process if they agree with the changes, and it gives them time to act and participate in their child's IEP.

Veronica Fiedler 07:21

And so what are some of the most frequent issues with PWN?

Beth Nelson 07:26

So the most common is not issuing the prior written notice when it's required. Timing is another issue, either the prior written notice was provided to the parent too early in the process, so maybe it was given before the IEP meeting even happened. Prior written notice is sometimes confused with the notice of meeting. The notice of meeting is informing the parents of the IEP meeting where it's going to happen the time the place the purpose of the meeting. Prior written notice happens after the meeting, but before services are implemented.

Veronica Fiedler 08:00

That is an important piece of information. And with timing, I know you mentioned timing before and like in the law, it says that parents need to be given a reasonable time. And but that's there's no number given. So, what do districts do?

Beth Nelson 08:20

I would I would refer to your district, your special ed director to find out what your policies and procedures are in your district. They may have a time frame for that. But yeah, the law just says reasonable so.

Veronica Fiedler 08:33

. So that's an important conversation to have with your directors how your district is interpreting that reasonable what reasonable means. So what advice would you give for special educators or directors to ensure a compliant PWN?

Beth Nelson 08:51

That's a hard one, I would not think of the prior written notice as another form to fill out. Think of it as a letter or a story of summarizing what happened during the meeting, what the discussion was, what are you proposing or refusing the reasons why you're proposing or refusing to change the body of evidence that supports that decision? And if you're having trouble filling those questions out, and maybe it's a situation that you're not sure of, I would definitely reach out to your special ed director for clarification and procedural safeguards for the parent because they need to know your director needs to know if there's a highly contentious, you know, IEP

The Gray Area Podcast

Podcast Notes and Transcript
Episode: Prior Written Notice (PWN)

meeting that's happening and you're not sure and you think it's gonna rise to a state complaint or due process, make sure your director knows that that's happening and this is a situation

Veronica Fiedler 09:47

That's good advice. And so where can somebody go to find more information about PWN.

Beth Nelson 09:54

We have more information about prior written notice in our IEP procedure and Guidance Manual and that is located on our CDE website, and that is under the Office of Special Education, and you can find it under IEP and resources. You're also welcome to reach out to me I have a training that I've done that I could email to people. And my email address is nelson_b@cde.state.co.us.

Veronica Fiedler 10:21

Great. I will include links to both things in the podcast notes.

Beth Nelson 10:27

Perfect.

Veronica Fiedler 10:27

Awesome. Great. Well, I want to thank you so much for lending your expertise to this conversation.

Beth Nelson 10:33

Thanks for inviting me.

Veronica Fiedler 10:36

Great and and if you have any questions about PWN then definitely reach out to Beth.

Beth Nelson 10:41

Great. Thank you.

Veronica Fiedler 10:42

Thanks so much. That concludes our episode. Thank you for joining us. Be sure to check the SLD webpage for more episodes of the gray area. I am your host, Veronica Fiedler signing off until next time.